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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,326	02/13/2001	Toyoaki Furusawa	1081.1109/JDH	9068
21171	7590	11/28/2005	EXAMINER	
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			HARRELL, ROBERT B	
			ART UNIT	PAPER NUMBER
			2142	

DATE MAILED: 11/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/781,326	FURUSAWA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Robert B. Harrell	2142	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 September 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 13 February 2001 and 28 January 2005 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: see attached Office Action.

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1. Claims 1-14 are presented for examination.
2. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks ™, and other legal symbols ®, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.

3. 35 U.S.C. 101 reads as follows:

**Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.**

4. Claims 8, 9, and 10 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter (i.e., a computer program per se') (see In re Beauregard (CAFC) 35 USPQZd 1383) and MPEP 2106. In Beauregard, the Decision of Board of Patent Appeals and Interferences rejecting applicants' computer program product claims on basis of printed matter doctrine was vacated, since Patent and Trademark Office stated that computer programs embodied in a tangible medium, such as floppy diskettes, were patentable subject matter under 35 USC 101 and must be examined under 35 USC 102 and 103. While the prior Office Action's example "A computer program product incorporated on a computer readable medium" was only a given example, the prior Office Action was not so literal in such example as to be the exact amendment to over come this rejection but rather a starting point that gave leave to the applicant to carry through and amend the claims "akin to the likes of In re Beauregard"; that is, something tangible. The claims still read on non-tangible things such as carrier waves. The following is only an example of something tangible and the applicant is with leave to amend in light of the following akin to the likes of In re Beauregard resulting in something tangible:

"A computer program product incorporated on a computer readable medium  
for storing computer readable program code embodied therein"

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

**A person shall be entitled to a patent unless -**

- (e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United

States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

6. Claims 1-14 are rejected under 35 U.S.C. 102 (e) as being anticipated by Li (US 6,799,214 B1).

7. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on <http://portal.uspto.gov/external/portal/pair>)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.

8. Li taught a distribution system (e.g., see Title) connected to clients (e.g., see Abstract) through communication circuit (e.g., see figures 1-3), comprising a parent server (e.g., see figure 2 (98)) and child servers (e.g., see figure 2 (22 and/or 100)), wherein the parent server comprised (a) a receiving unit (e.g., see figure 5 (38,42,72, and/or 74) receiving an area identification representing a geographical position (e.g., see col. 2 (line 46 "geographically") and col. 13 (line 32 "geographical"))(e.g., also see figure 1 ("Japan") and figure 5 ("IP address" of 130 as technically explained per col. 2 (lines 28-53))) of one of the clients (e.g., "end user" 128 of figure 5) and identification information of contents (e.g., "Web Pages" per figure 4 and figure 5 "Page request" of 130)), distribution of which is requested by the one of the clients (e.g., see figure 5 (130)), and (b) a selecting unit (e.g., see figure 5 (38, 72, 74, 76, 80 and/or 126)) selecting one of the child servers that holds the contents, distribution of which is requested, and which child server is closer to the one of the clients that originates the distribution request, using the received area identification and identification information (e.g., see Abstract), and notifying (e.g., see figure 5 (76)) the one of the clients that originates the distribution request of logical position information of the selected one of the child servers (e.g., see col. 9 (line 56-et seq.)); and each child server comprises a distribution unit distributing the contents, distribution of which is requested by the one of the clients (e.g., see col. 10 (line 35-et seq.)).

9. Per claims 2, 3, and 4, such ascertaining, copying, and deleting was normal "cache" functions of the caching for the mirror sites as depicted in figure 5 and recited, for example, in col. 7 (line 58-et seq.) for copying the contents, and col. 10 (lines 35-40 (threshold equates to ascertaining frequency of distribution requests for Web Page contents)), and col. 12 (line 66-et seq.) and more so in col. 13 (line 32 "deleted") for reasons more so than staleness. The usage "cache" terminology is noted within Li, and thus functionality (i.e., method of expiring data from cache or obtaining data), is therefore incorporated into this applied reference as anticipated by col. 9 (lines 33-46) and col. 12 (lines 20-53). It is noted that the claims recite an "or" condition (i.e.,

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"presence or absence" also "or the frequency"); thus, only one limitation condition need be met, not all, by the applied reference (i.e., presence or absence or frequency) under 35 U.S.C. 102. Also, while given the hosting Web Servers and Mirror sites, nomenclature need not be restricted statically to each site, thus a Mirror Site was anticipated to be a parent site in a plural level tree structure or that the parent site be the Mirror Site since each computer was a Web Server in and of itself. More so, the copying of data in terms of pushing or pulling is relative in that a parent that pushes Web Pages to the child none the less has a child that copies the content and the like for pulling from the child off the parent with notification to the client being that of element 76 of figure 5 (located near center right of figure 5 just under "Cacheportal 38"). In other words, if the copying is initiated by the parent (i.e., a push) the child nonetheless partakes in the copying function/program and thus the child also copies the contents based on a program download from the parent (i.e., HTML code and/or other code to program the child into this relationship be the program length of just one code line or command).

10. Per claims 5-14, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus rejected for the same reasons given above. However, per claims 8, 9, and 10, software and hardware are equivalent and it was also anticipated that to function as taught the associated product was inherently required within Li's system.

11. The above rejection under 35 U.S.C. 102(e) was provided in examiner's prior Office Action which rejection and grounds for rejection are repeated and continue herein this FINAL Office Action.

12. In rebutting the above rejection under 35 U.S.C. 102(e), the applicant argued in substance that:

a) as provided in MPEP 706.02 entitled Rejection on Prior Art, anticipation requires that the reference must teach every aspect of a claimed invention. Applicants submit that Li does not support an anticipatory-type rejection by not describing features recited in the present application's independent claims. Independent claim 1 recites a distribution system including "a parent server . . . receiving an area identification representing a geographical position of one of the clients and . . . using the received area identification and identification information, and notifying the one of the clients that originates the distribution request of logical position information of the selected one of the child servers." However, Li taught a distribution system (e.g., see Title) connected to clients (e.g., see Abstract) through communication circuit (e.g., see figures 1-3), comprising a parent server (e.g., see figure 2 (98)) and child servers (e.g., see figure 2 (22 and/or 100)), wherein the parent server comprised (a) a receiving unit (e.g., see figure 5 (38,42,72, and/or 74) receiving an area identification representing a geographical position (e.g., see col. 2 (line 46 "geographically") and col. 13 (line 32 "geographical"))(e.g., also see figure 1 ("Japan") and figure 5 ("IP address" of 130 as technically explained per col. 2 (lines 28-53))) of one of the clients (e.g., "end user" 128 of figure 5) and identification information of contents (e.g., "Web Pages" per figure 4 and figure 5 "Page request" of 130)), distribution of which is requested by the one of the clients (e.g., see figure 5 (130)), and (b) a selecting unit (e.g., see figure 5 (38, 72, 74, 76, 80 and/or 126)) selecting one of the child servers that holds the

contents, distribution of which is requested, and which child server is closer to the one of the clients that originates the distribution request, using the received area identification and identification information (e.g., see Abstract), and notifying (e.g., see figure 5 (76)) the one of the clients that originates the distribution request of logical position information of the selected one of the child servers (e.g., see col. 9 (line 56-*et seq.*)); and each child server comprises a distribution unit distributing the contents, distribution of which is request by the one of the clients (e.g., see col. 10 (line 35-*et seq.*));

b) independent claims 5 and 9 recite, respectively, contain a distribution system and a computer program product incorporated on a computer-readable medium including "ascertaining a presence or an absence of a distribution request or a frequency of distribution requests for the contents from the one of the clients situated in an area for which the one of the child servers is responsible . . . and acquiring . . . the contents that are not held by the one of the child servers on a basis of the ascertained presence." However, these claims, and argument, contain an "or" condition and examiner need only find anyone of these conditions to reach within the meets and bonds of the claims. Thus Li taught ascertaining a presence of a distribution request (Li's Abstract line 7) for the contents (Li's Abstract line 2) from the one of the clients (Li's users) situated in an area for which the one of the child servers is responsible and acquiring the contents that were not held by the one of the child servers on a basis of the ascertained presence per Li's Abstract;

c) independent claim 10 recites a computer program product including "deleting from the child server. . . for the contents from the clients situated in an area for which one of the child servers is responsible." However, again, an "or" condition and copying was covered in Li's Abstract, that is, if the requested content is not mirrored it is so mirrored (copied). Nonetheless, such deletion was also covered in col. 13 (lines 9-23) see line 18;

d) independent claim 11 recites a method including "selecting by the parent server, on a basis of the received area identification of the one of the clients and contents identification information, one of the child servers." However, such was covered in Li's Abstract. That is, based on the client's location and content request, a child server nearest the requesting child is selected;

e) independent claim 12 recites a method including "ascertaining a presence or an absence of a distribution request or a frequency of distribution requests in respect of the contents from the clients situated in an area for which one of the child servers is responsible." However, again, an "or" condition and copying was covered in Li's Abstract, that is, if the requested content is not mirrored it is so mirrored (copied);

f) independent claim 13 recites a distribution system wherein "the parent server selects, on a basis of the area identification of the one of the clients and the contents identification information that is communicated thereto, one of the child servers that holds the contents, distribution of which is requested from the selected one of the child servers, on the basis of the logical position information of the selected one of the child servers." That is, according to aspects of the present invention, in a distribution system that includes a parent server and a child server, the parent server receives an area id representing geographical position of the client originating the request, and selects one of the child servers that hold the contents requested, using the received area id. (See, for example, page 26, lines 7-17 relating to "child servers associated with General Information Centers that cover respectively the Tokyo area and the Kanagawa area.", and page 18, lines 15-21). Li does not teach such "an area id representing geographical

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position." Further, Li does not teach a child server using a received area id, or a selecting based on area identification for which the child server is responsible. Rather, Li merely teaches (col. 2, lines 45): although end users 92 and mirror sites 22 and 100 may be geographically close, they may be located on completely different networks. Thus, the process of selecting and copying content into a mirror site and informing end user 92 that the desired content can be found in a particular mirror site is not necessarily a simple matter of geography, and (col. 13, lines 31-32) that "daemon program 42 may base its redirection criteria on the requestor's IP address or geographic location." **However**, while argued and not claimed, Li taught such an area id, as stipulated by the applicant, the IP address, representing geographical position per figure 1 "Japan" which encompassed the Tokyo area and the Kanagawa area. Further, while argued and not claimed, Li also taught a child server using a received area id, and/or selecting based on area identification for which the child server is responsible per the Abstract and col. 1 (line 1-*et seq.*). It is noted that IP addresses are id's that identify machines within, among other networks, the Internet. Ironically, the Internet is not real. A figment of the public's imagination. A ghost network within the phone networks formulated by a series of agreed protocols (RFCs) enhanced by a series of Intranets no more so than FIDO net. Unlike the Cable Company, there is no Internet wire on the main street other than the line owned by the phone company; no matrix of dedicated cables and links hardwired to computerized devices. The Internet is a Logical Network.

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

14. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Friday from 5:30 am to 2:00 pm and on weekends from 6:00 am to 12 noon Eastern Standard Time.

16. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew T. Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (703) 872-9306.

17. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.



GROUP 2142

**ROBERT B. HARRELL**  
**PRIMARY EXAMINER**